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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/551,379

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Cosimo Rummo

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EXAMINER

WATTS, JENNA A

ART UNIT

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1794

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/551,379	Applicant(s) RUMMO, COSIMO	
	Examiner JENNA A. WATTS	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 14-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20050929</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, Claims 1-13, in the reply filed on 5/4/2009 is acknowledged.
2. Claims 14-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected Groups II and III, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 5/4/2009.
3. The restriction requirement is deemed proper and therefore made FINAL.

Specification

4. The abstract of the disclosure is objected to because the phrase "tear out bag" appears to be a typographical error and should read "tear out band," as per Page 3 of the instant specification, lines 16-17. Correction is required. See MPEP § 608.01(b).

Claim Objections

5. Claims 1-13 are objected to because of the following informalities: In particular, Claims 1-13 recite the phrase "characterized by". It is unclear whether the limitations following the phrase "characterized by" are in fact required or preferred claim limitations.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Fenini (U.S. Patent No. 5,411,202).**

8. Claims 1-13 will be interpreted as evoking 112 6th Paragraph “means for” language because of the presence of “means for” language in Claims 1 and 2 and a clear link in the specification between the associated structure and the claimed function, and therefore will be treated in accordance with 112 6th Paragraph as having means-plus-function limitations.

9. Regarding Claim 1, Fenini teaches a food package for pasta (Column 1, lines 10-12), comprising a soft bag (Figures 1 and 3). Fenini teaches that the packaging is a flow pack type of package made from a rectangular sheet, wherein the opposite edges are welded together to form a kind of tube, and which is then subsequently sealed at its two free ends (Column 1, lines 25-29) and also teaches that it is desirable to provide a type of package with easy-opening devices using tear strips that have a thin plastic film of wrapper (Column 1, lines 43-44 and 45-47), therefore, the thin plastic film of wrapper is deemed a soft bag. Fenini teaches that it is known to use such packaging in the food industry, especially for pasta (Column 1, lines 10-12), thus, it would be expected that the bag would contain a determined quantity of pasta since the wrapper/bag has a determined volume. Fenini further teaches that the bag has a weakened area for opening the bag

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(Column 2, lines 15-17, 54-55, 60-61 and Figure 1, Reference numbers 5), characterized in that said weakened area has at least a pre-cut line associated to means for breaking the bag at said pre-cut line (Column 2, lines 15-17, Figure 1, Reference numbers 5).

10. Regarding Claim 2, Fenini teaches that the means for breaking the bag comprise a tear-out band, because Fenini teaches that a tear strip is fitting on the outer face of the wrapper/bag (Column 2, lines 60-62) and that the tear strip may be a wide strip (Column 2, lines 67-68), which is deemed a band. Fenini is deemed to meet the 112 6th means-plus-function limitation of Claims 1 and 2, because Fenini teaches a weakened area that has at least a pre-cut line associated with means for breaking the bag at the pre-cut line, and said means for breaking the bag comprises a tear-out band (Column 2, lines 11-20). Fenini further teaches that the tear strip/tear-out band is fitted, mechanically or by self-adhesion, heating or other suitable means, on the outer surface of the wrapper/bag (Column 2, lines 60-62 and Figure 1, Reference numbers 5 and 6) and Applicant states that the tear-out band is constituted by a small strip that is sealed or glued on the bag (See instant specification, Page 3, lines 12-17).

11. Regarding Claims 3 and 4, Fenini teaches that the tear-out band is positioned along the development of at least one pre-cut line (Column 2, lines 15-20 and Figure 1, Reference number 5), and that there are two pre-cut lines and that the tear-out band is positioned between the two lines (Figure 1, Reference number 5).

12. Regarding Claim 5 and 6, Fenini teaches that the tear-out band is fitted on the outer surface of the wrapper/bag by self-adhesion or heating, which is deemed synonymous with the tear-out band being glued or sealed on the bag.

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13. Regarding Claim 7, Fenini teaches that the bag is welded together to as to form a kind of tube in which the product to be protected is housed (Column 1, lines 26-28), therefore the bag is deemed to have a tubular shape. Fenini further teaches that the bag is closed at the ends and that the weakened area is positioned at one of the ends (Figure 2, with Reference numbers 3 and 4 being the closed ends and Reference number 5 being the weakened area at one of the ends).

14. Regarding Claim 8, Fenini teaches that a first end (see Figure 2, Reference number 3, for example) has a planar shape defined by the association of two opposite portions of the tubular bag because Fenini illustrates that the two side of the bag come together to form end Reference number 3. Fenini further teaches that the pre-cut line is positioned on the first end and that the tear-out band is positioned along the development of the at least one pre-cut line (See Figure 2, Reference number 5).

15. Regarding Claim 9, Fenini teaches two pre-cut lines with the tear-out band positioned between the two lines (See Figure 2, Reference number 5).

16. Regarding Claim 10, 12 and 13, Fenini teaches that one end of the strip projects from a welded longitudinal fin (see Figure 1, Reference number 2), and the pre-cut line and tear strip/band extend entirely around the wrapper/bag so as to form a loop with superimposed ends (Column 2, lines 63-66). Fenini teaches that the complete separation of the wrapper in two distinct parts by means of the tear strip is possible (Column 2, lines 9-10 and Figures 2 and 3, path of tear-out band 5). Therefore, Fenini is deemed to teach that the pre-cut line extends on one and both of the two opposite portions of the bag, and thus around the tubular bag to define a closed path.

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17. Regarding Claim 11, Fenini teaches that in the absence of other arrangements, the tear strip or band will not be able to function to tear the entire wrapper because of the presence of the welded longitudinal fin (Column 3, lines 8-14 and Figure 1, Reference number 2 and Figure 3). Fenini illustrates in Figure 3 that the wrapper/bag is broken around the entire bag with the exception of at the welded longitudinal fin (Figure 3), and teaches that the presence of incisions 8 and 9 (see Figure 3) are formed during the packaging operation which lie alongside the tear strip to locally weaken the wrapper/bag and facilitating tearing of the fin (Column 2, lines 15-20 and Column 3, lines 11-14)). Therefore, Fenini is deemed to teach that the pre-cut line extends only partially around the tubular bag.

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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20. **Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fenini (U.S. Patent No. 5,411,202) in view of Brogi (WO 01/98172).**

21. Fenini is relied upon as above in the rejection of Claim 7.

22. In the alternative interpretation that Fenini does not specifically teach that the pre-cut line extends only partially around the tubular bag, Brogi teaches a soft tubular bag for pasta (Page 2, lines 25-27 and Figure 7) that ensures easy opening for picking, offers the possibility of stable and efficient closure during packaging and furthermore offers the possibility of closing the package again to preserve the residual contents (Page 1, lines 14-17). Brogi also teaches a u-shaped cut located near the one end with an adhesive label applied on the wrapping for completely covering said cut and with this arrangement, lifting the adhesive label will open at least the area of material of the package which is delimited by the cut and the opening can be closed by means of said label (Page 1, lines 22-26). Brogi also teaches that the opening permits the partial spontaneous, and consequently approximately dosed, release of product, at least during the first picking and this is possible especially with long pasta packages (Page 2, lines 5-8). The adhesive label is deemed a tear-out band (see Figure 5, the adhesive label at Reference number 9) that is positioned between pre-cut lines (see Figure 5, Reference numbers 7A and 11) that extend only partially around the tubular bag (see Figure 5).

23. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, for the pasta package as taught by Fenini to have comprised a pre-cut line extending only partially around the tubular bag, as taught by Brogi, because Brogi teaches that such a partial pre-cut line enables the approximately dosed release of product from the bag, and also allows for a stable and efficient re-closure of the packaging to preserve the residual contents for

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future use. One of ordinary skill in the art would have been motivated to use a pre-cut line that only partially extends around a tubular pasta bag in order to conveniently allow consumers to choose a particular amount of pasta desired at a particular time and to also allow the re-closure of the bag to ensure the remaining contents of the bag remain fresh until future use.

Conclusion

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNA A. WATTS whose telephone number is (571) 270-7368.

The examiner can normally be reached on Monday-Friday 8am-4:30pm.

27. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

28. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. A. W./

J. Watts

Examiner, Art Unit 1794

May 19, 2009

/KEITH D. HENDRICKS/

Supervisory Patent Examiner, Art Unit 1794